IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 926 of 1997 and
X-Objection No. 12-CII of 2004
Date of Decision : 16.7.2014

M/s D.P. Freight Carriers (P) Ltd. ..... Appellant

Versus

Rani Devi and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gorakh Nath, Advocate, for the appellant.
Mr. Harish Bhardwaj, Advocate,
for respondents No. 1 to 3 Claimant and Cross Objectors.
Mr. R.C. Gupta, Advocate,
for respondent No. 6-Insurance Company.

KULDIP SINGH, J.

By this single judgment, I will dispose of FAO No. 926 of 1997, filed by M/s D.P. Freight Carriers (P) Ltd. and X-Objection No. 12-CII of 2004, filed by claimant-respondent No. 4.

The facts of the case are that on 1.1.1995, Phul Kanwar and Anoop Singh were coming from village Mehlana on their respective bicycles. When they reached near Panchayat Bhawan on Court Road, deceased was ahead of Anoop Singh and was going to his workshop. On the crossing of the Court Road, deceased gave a signal towards his right hand to take turn. However, a canter No. HR-38-7645 came from Sonepat side and going towards Gohana. It was driven by Hira Lal in rash and negligent manner and hit the cycle of Phul Kanwar (deceased). Phul Kanwar fell down and received grievous injuries and ultimately died. It is stated that deceased was doing the work of welding and also selling milk. He was earning Rs. 3,500/- per month. Claimants are widow, minor children and mother of the deceased.

The petition was contested by the respondents. Both the parties led evidence before the Motor Accident Claims Tribunal, Sonepat (in short

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'the Tribunal'). After hearing both the parties, the Tribunal came to the conclusion that accident took place due to rash and negligent driving of the canter. It came to the conclusion that licence of respondent No. 1-Hira Lal is fake. The Tribunal also calculated the income of deceased Phul Kanwar at Rs. 1,500/- per month and applied the multiplier of 16 and granted compensation of Rs. 2,30,400/- with 12% per annum interest. It was ordered to be paid by respondents No. 1 and 2 i.e. driver and owner of the offending canter respectively.

Aggrieved by the said Award, respondent No. 2-owner of the offending canter has come up in appeal, challenging the finding of the Tribunal, whereby liability was fixed upon it on account of the fact that the licence of the driver of its canter was fake.

Claimants No. 1 to 3 have also filed cross objections stating that inadequate compensation was granted to them.

I have heard learned counsels for the parties and have also carefully gone through the file.

Firstly, taking up the appeal of the owner of the offending canter, the learned counsel for the appellant/owner has argued that the Tribunal has wrongly relied upon verification report (Ex.R-3). It has been argued that the said report was not proved in accordance with law and could not be relied upon to hold that the driving licence of respondent No. 1-Hira Lal was fake. He has produced the authority of this Court in New India Assurance Company Versus Rani, 2001 (3) RCR (Civil) 720.

On the other hand, learned counsel for the respondent-Insurance Company has produced authority of the Hon'ble Supreme Court in National Insurance Co. Ltd. Versus Geeta Bhat and others, 2008 ACJ 1498, wherein the surveyor's report was accepted by the Apex Court.

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I am of the view that the proceedings under Section 166 of the Motor Vehicle Act, 1988 for grant of compensation are summary in nature. The strict rule of Civil Procedure Code are not applicable to the proceedings. It is in the nature of inquiry. When report (Ex.R3) of the Motor Vehicle Authority, Solan, was tendered into evidence by the insurance company, no objection was raised by the present appellant. Similarly, when the claimants tendered some documents, no objection was raised by the opposite party. Once the report is there and it is admitted in evidence without any objection from anybody, the same has to be considered. The report clearly shows that the licence of Hira Lal produced in this case was never issued by the concerned Motor Vehicle Authority, Solan. It being so, the findings of the Tribunal in this regard are affirmed. However, the Tribunal erred in completely exonerating the Insurance Company. In this case, as per the authority in National Insurance Co. Ltd. Versus Geeta Bhat and others (supra), the compensation was to be first paid by the Insurance Company and then it was to be recovered from the insured.

Now, coming to the cross objections of the claimants, it has been pressed that inadequate compensation has been granted. Future prospects were not added and multiplier of 17 should have been applied. It has been further argued that no compensation on account of loss of consortium to the wife, loss of love and affection to the children and funeral and last rites expenses were allowed. Regarding income of the deceased, there is a self serving statement of Rani Devi (PW1). She has stated that deceased was working as a welder as well as selling milk. I am of the view that the job of welder and milk seller are entirely different. There is no proof of the income of the deceased. Therefore, no fault can be found with the income assessed by the Tribunal @ Rs. 1,500/- per month. However, I

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find that the future prospects were not added and multiplier of 17 should have been applied keeping in view 26/27 age of the deceased, as stated in the post mortem report. Therefore, Rs. 750/- per month are added on account of future prospects. The total income of the deceased comes to Rs. 2,250/- per month, out of which 1/3rd i.e. Rs. 750/- are deducted as personal expenses. The dependency of the claimants comes to Rs. 1,500/- per month. The total amount comes to Rs. 1500X12x17=Rs. 3,06,000/-. Keeping in view the fact that the accident took place in the year 1995, Rs. 50,000/- on account of loss of consortium to the wife, Rs. 50,000/- on account of loss of love and affection to the children and Rs. 20,000/- as funeral and last rites expenses are allowed. The total amount of compensation comes to Rs. 4,26,000/-.

This Court has been informed that the owner has already paid the compensation, awarded by the Tribunal. Therefore, it is ordered that the enhanced compensation shall be first paid by the Insurance Company with 7.5% interest from the date of filing claim petition till its realization. However, the Insurance Company shall have the right to recover the same from the insured/owner. Since the minor claimants have now become major after a lapse of 19 years, therefore, the enhanced amount shall be paid to the claimants No. 1 to 3 in equal shares by depositing in the bank accounts to be furnished before the Tribunal. As such, FAO No. 926 of 1997 stands dismissed and X-Objection No. 12-CII of 2004 stands allowed.

(KULDIP SINGH)
JUDGE

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sjks

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